

Capital Case Appeals

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WAIVER OF ISSUES ON APPEAL

Make sure the record is complete

- Appellate court will not speculate
- If record incomplete, appellate court will presume that the missing record supports the trial court's decision
- Nothing should be done off the record

WAIVER OF ISSUES ON APPEAL

Challenges to Grand Jury findings of PC

- Motion must be filed as special action before trial
- Not reviewable on appeal unless state knew PC was based partially on perjured, material testimony

WAIVER OF ISSUES ON APPEAL**Severance Motion**

- Must be timely made
- If denied, motion must be renewed during trial proceedings
- If not renewed, any error in trial court's ruling on the motion is waived

WAIVER OF ISSUES ON APPEAL**Motion to Suppress**

- Appellate review limited to evidence presented at evidentiary hearing
- If evidentiary hearing denied, appellate review limited to the facts presented in the suppression motion
- Motion for reconsideration of the suppression ruling must be raised if testimony material to the suppression ruling changes during the trial

WAIVER OF ISSUES ON APPEAL**Contemporaneous Objection**

- Objections must be timely and specific to preserve for appellate review
- General or continuing objections are insufficient to preserve a trial court error for review
- Failure to raise appropriate contemporaneous objections generally waive all error except fundamental error

WAIVER OF ISSUES ON APPEAL**Jury Instruction and Forms of Verdict Requests**

- Shall be in writing
- If defendant does not request (or object to) a specific jury instruction, defendant waives all but fundamental error
- If instruction was requested but not submitted on the record, appellate court will not review

WAIVER OF ISSUES ON APPEAL**Prior Convictions**

- Failure to object to the validity of a prior conviction generally operates as waiver
- Appellate court may review for fundamental error even if defendant fails to make a timely objection

WAIVER OF ISSUES ON APPEAL**Offers of Proof**

- Offer of proof to establish the importance and materiality of the evidence
 - » Admission of evidence
 - » Examination of witnesses
 - » Calling a witness
- Without making the offer of proof, an appellate court has no basis to review

WAIVER OF ISSUES ON APPEAL

Reference U.S. Constitution and Arizona Constitution in motions, arguments and objections

DIRECT APPEAL

- Independent Review
- Crimes occurring before August 1, 2002
- Abuse of Discretion Review
- Crimes occurring on/after August 1, 2002

BRIEFING TIPS

- Review recent Arizona Supreme Court opinions
 - All capital cases result in written opinions
 - Approximately 1/3 of Arizona Supreme Court's published opinions in recent years are death penalty cases
- Watch oral arguments – available on-line
- Winnow Issues
 - Pre-trial
 - Voir Dire
 - Guilt Phase
 - Sentencing Phases
- Page Limits
- Edit

ORAL ARGUMENT TIPS

- Preparation
- More preparation
 - Familiarity with Record
 - Legal Issues
 - Read recent decisions
 - Watch oral arguments – available online
 - Moot court

ORAL ARGUMENT (CONT.)

- Assess strengths and weaknesses
- Test hypotheses
- Listen to Justices
- Don't interrupt
- Answer questions directly
- Conversational style
